

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

FILED  
IN CLERKS OFFICE

## UNITED STATES DISTRICT COURT

for the

2021 AUG -2 PM 2: 24

David Ailheem Jerome Yarde  
Petitioner

v.

Case No.

(Supplied by Clerk of Court)

U.S. DISTRICT COURT  
DISTRICT OF MASS.Mr. Dean Gray, Supt., et al.  
Respondent

(name of warden or authorized person having custody of petitioner)

## PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

## Personal Information

1. (a) Your full name: David Ailheem Jerome Yarde
- (b) Other names you have used: \_\_\_\_\_
2. Place of confinement:
  - (a) Name of institution: Souz-Baranowski Correctional Center
  - (b) Address: PO Box 8000 Shirley, Massachusetts, 01464
- (c) Your identification number: W105085
3. Are you currently being held on orders by:
 

☐ Federal authorities ☒ State authorities ☐ Other - explain: \_\_\_\_\_
4. Are you currently:
 

☐ A pretrial detainee (waiting for trial on criminal charges)

☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

  - (a) Name and location of court that sentenced you: Suffolk Superior Court Boston Mass
  - (b) Docket number of criminal case: 2012-11181
  - (c) Date of sentencing: August 22, 2014

☐ Being held on an immigration charge

☐ Other (explain): \_\_\_\_\_

## Decision or Action You Are Challenging

5. What are you challenging in this petition:
 

☒ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

- ☐ Pretrial detention  
☐ Immigration detention  
☐ Detainer  
☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)  
☒ Disciplinary proceedings  
☐ Other (explain):

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Suffolk Superior Court  
Boston mass(b) Docket number, case number, or opinion number: 2012-11181

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

I was sentenced to life with the possibility of parole  
after fifteen years on second-degree murder charge and  
arm charge not less than three years nor more than three years and one day on the fire  
to be served concurrently  
 (d) Date of the decision or action: August 22, 21

**Your Earlier Challenges of the Decision or Action**7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes
 ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: suffolk Superior Court(2) Date of filing: March, 27, 2018(3) Docket number, case number, or opinion number: 2012-11181(4) Result: Motion Denied(5) Date of result: Jan 8th, 2020

(6) Issues raised: Actual Innocence Based on  
forensic pathologist expert report From Dr Jonathan Arden  
of Ardens Forensic, forensic report from Dr. Elizabeth Laposata,  
video expert report By Pampion, and most recently a crime  
scene reconstructionist / Shoeing expert report Done by  
Mr Louis Gordon of Forensic Evidence & Investigations  
see enclosed copy of Louis Gordon's final report.

(b) If you answered "No," explain why you did not appeal:

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☒ Yes
 ☐ No

(a) If "Yes," provide:

- (1) Name of the authority, agency, or court: Suffolk Superior Court  
Doston, mass
- (2) Date of filing: January 19, 2021
- (3) Docket number, case number, or opinion number: 2012-11181
- (4) Result: Denied
- (5) Date of result: N.A
- (6) Issues raised: Actual Proof of Innocence Based  
on Lewis Gordon Ballistics / firearms  
examination and Crime Scene reconstructionist and  
shooting reconstructionist expert report

(b) If you answered "No," explain why you did not file a second appeal:

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☒ Yes☐ No

(a) If "Yes," provide:

- (1) Name of the authority, agency, or court: Appeal Court Suffolk
- (2) Date of filing: N.A
- (3) Docket number, case number, or opinion number: 2012-11181
- (4) Result: Denied
- (5) Date of result: N.A
- (6) Issues raised: stay of Execution of sentence  
Pending Decision in Appeals court

(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☒ Yes☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes☒ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Date of filing: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: \_\_\_\_\_

# 11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes

☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: \_\_\_\_\_

- (b) Date of the removal or reinstatement order: \_\_\_\_\_

- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☐ No

If "Yes," provide:

(1) Date of filing: \_\_\_\_\_

(2) Case number: \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result: \_\_\_\_\_

(5) Issues raised: \_\_\_\_\_

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Case number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

## 12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes

☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: \_\_\_\_\_

(b) Name of the authority, agency, or court: \_\_\_\_\_

(c) Date of filing: \_\_\_\_\_

(d) Docket number, case number, or opinion number: \_\_\_\_\_

(e) Result: \_\_\_\_\_

(f) Date of result: \_\_\_\_\_

(g) Issues raised: \_\_\_\_\_

## Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: I have on record 4 scientific expert reports that proves my innocence to a scientific certainty 2 Forensic experts, 1 video expert and 1 Ballistics/ Firearms examination and Crime scene reconstructionist, including shooting reconstructionist

(a) Supporting facts (Be brief. Do not cite cases or law.):

It's the special responsibilities of a Prosecutors office to seek to remedy an injustice where theres clear and convincing evidence that a defendant Prosecuted in their office did not commit the crime that he/she is convicted of and to not immediately move to vacate this wrongful conviction is a miscarriage of Justice

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes

☒ No

GROUND TWO: The Suffolk County DA's office has been aware of the first report since 2018 and By 2021 January they were well aware of the last report

(a) Supporting facts (Be brief. Do not cite cases or law.):

on record are motions filed since 2018 til 2021 which all provided all 4 factual ~~facts~~ expert reports

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☒ No

GROUND THREE: My Proof of Innocence has been undisputed

(a) Supporting facts (Be brief. Do not cite cases or law.):

The Suffolk County DA's office had an extensive amount of time / resources to find an expert to attempt to Dispute these facts

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☒ No

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

**GROUND FOUR:** The Suffolk County DA's office opposed the January 19th 2021 motion seeking relief. But Did not Deny the fact that I'm Factually Actually Innocent ~~see~~ See Enclosed ADA's opposition.

(a) Supporting facts (Be brief. Do not cite cases or law):

MY Constitutional rights are blatantly Being violated Simply Cause the Suffolk County DAS office refuses to seek to immediately remedy this injustice and the Lower courts refuse to use its inherent power to do whatever may be done under the general principle of Jurisprudence to insure to the citizen a fair trial whenever his life, liberty, property, or character is at stake, ignoring the facts Cause of procedural Default.

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☒ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

#### Request for Relief

15. State exactly what you want the court to do: I'm respectfully requesting that this Court not ignore the fact that I'm actually innocent due to Procedural Default / Due Process or Exhaustion of Remedies Lack thereof not allow my Constitutional rights to continue to be violated and order that I be immediately released from unlawful restraint and I not be retried.

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

**Declaration Under Penalty Of Perjury**

If you are incarcerated, on what date did you place this petition in the prison mail system:

I placed this petition in on 7,9,21

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 7,8,21

David Gande

Signature of Petitioner

Signature of Attorney or other authorized person, if any